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US ARMY CORPS OF ENGINEERS

NEW ENGLAND DISTRICT

PUBLIC HEARING before the US Army Corps of Engineers and the US Environmental Protection Agency, held at the Westin Stamford, Stamford, Connecticut on Thursday, November 13, 2003, commencing at 4:00 p.m., concerning:

The Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound Connecticut and New York

BEFORE:

Larry Rosenberg, as Moderator

Melville P. Cote, Jr., as Hearing Officer, US EPA Mark Habel, Project Manager, Corps of Engineers

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P R O C E E D I N G S

MODERATOR ROSENBERG: Good afternoon. I'm Larry Rosenberg, and I'm the Chief of Public Affairs for the United States Army Corps of Engineers in New England, and I would like to welcome you to this public hearing held in conjunction with the government's release of the Draft Environmental Impact Statement for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York.

This hearing is being held in accordance with the National Environmental Policy Act for the sole purpose of listening to you.

As a direct result of the comments and concerns raised by the public during our previously held hearings on September 30th in Stony Brook, New York, and on October 1st here in Stamford, the EPA and the Corps are holding this additional public hearing, and have extended the public comment period for this Draft Environmental Impact Statement. The comment period will close on November 17th.

Before we begin, I'd like to thank you for getting involved in this environmental review process. You see, we're here to listen to your comments, to understand your concerns, and to provide you an opportunity to appear on the record, should you care to do so. This hearing is yours.

Our Hearing Officer today is Mel Cote, Manager of the Water Quality Unit of the office of Ecosystem Protection for the Environmental Protection Agency, New England Region, that is headquartered in Boston, Massachusetts.

Other federal representatives here today are Ann Rodney from the Environmental Protection Agency; Mark Habel, the Corps' Program Manager; and Susan Holtham, the Army Corps' EIS Manager; and, of course, some of the staff of the Public Affairs Office being met as you entered this facility.

The agenda for today is following this introduction, Mr. Cote will address the hearing. He will be followed by the Corps of Engineers Project Manager, Mark Habel, who will provide an overview of the Corps' role, and to discuss the recommended dredged material disposal with a focus

on the purpose and need of the designation. Mark will then introduce Mr. Carleton Hunt from Battelle, a contractor for the Corps of Engineers, and Dr. Drew Carey from Coastal Visions, who will make a 30 minute or so presentation on the EIS processes and the recommendations. I will then open this hearing to public comments, utilizing our hearing protocols.

Should you need copies of the Federal Register notice, the hearing procedures, or other pertinent information, it is available at the registration tables. I should point out that the government has made no final decisions regarding the final outcome of this very public process.

Before we begin, I would like to remind you of the importance of filling in these cards. These cards serve two purposes. First, they let us know that you're interested in this project so we can keep you informed in the future.

Second, they provide me a list of those who wish to provide comment today. If you did not complete a card, but wish to speak or receive future information, please.

One additional comment, we are here to

receive your comments, not to enter into any discussion of those comments, or to reach any conclusions. Any questions you have should be directed to the record, and not to the individuals on the panel.

Thank you.

Ladies and gentlemen, Mr. Mel Cote.

MR. COTE: Thanks, Larry.

Good afternoon, everyone. As Larry mentioned, my name is Mel Cote. I'm the Manager of the Water Quality Unit in the U.S. Environmental Protection Agency's New England Regional Office. Thank you for coming to this public hearing.

Whether it's to voice support for, or concerns about the federal action proposed in this Draft EIS, or simply to learn more about the project, we welcome your participation.

EPA published a Federal Register notice and issued a press release on September 12th announcing the availability of the Draft EIS for public comment until October 27th, posted the Draft EIS on our website, and mailed notices and copies of the Draft EIS and supporting documents to a large mailing list of agencies, organizations, and

individuals. We also held two public hearings, on September 30th in Stony Brook, New York; and on October 1st, here in Stamford, to present information on the Draft EIS and to solicit oral and written comments. Subsequent to that, and in response to public comment, we extended the public comment period to November 17th, and scheduled this additional public hearing.

This is consistent with our ongoing efforts throughout the EIS process to provide the public with ample opportunity to get information about the project and to give us their feedback, and it's why we're here today to listen to and record any comments you may have on the Draft EIS.

EPA and the U.S. Army Corps of Engineers jointly regulate dredged material disposal under federal authorities provided by Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act, which is also known as the Ocean Dumping Act. In administering these programs, we work closely with other federal resource management agencies like the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, and state

environmental agencies, to ensure proper coordination and consistency with statutory and regulatory requirements and environmental standards.

Since 1980, EPA and the Corps have been applying the sediment testing requirements of the Ocean Dumping Act to all federal projects and to private projects generating 25,000 cubic yards of dredged material or more. Dredged material that meets these criteria and is determined to be suitable for ocean disposal is disposed of at one of the four sites that were evaluated and chosen as disposal sites pursuant to programmatic and site specific Environmental Impact Statements by the Corps of Engineers in 1982 and 1991. These sites are known as the Western Long Island Sound, Central Long Island Sound, Cornfield Shoals, and New London disposal sites.

In 1992, Congress added a new provision to the Ocean Dumping Act that, for the first time, established a time limit on the availability of Corps-selected sites for disposal activity. The provision allows the selected site to be used for a five-year period beginning with the first disposal

activity after the effective date of the provision, which was October 31st, 1992. It also provides for an additional five-year period beginning with the first disposal activity commencing after completion of the first five-year period. Use of the site can, however, be extended if the site is designated by EPA for long-term use. Thus, the Corps can select disposal sites only for short-term limited use; whereas, Congress authorized EPA to undertake long-term site designations, subject to ongoing monitoring requirements to ensure that the sites remain environmentally sound.

Periodic dredging and, therefore, dredged material disposal are essential for the safe navigation and facilitating marine commerce. EPA believes it's preferable from an environmental perspective to dispose of dredged material in only a few discreet locations so that they can be more easily managed and monitored to reduce potential adverse impacts on the surrounding marine environment. With the continuing need for dredged material disposal sites, and the impending expiration of the short-term site selections by the Corps for the four current dredged material

disposal sites in the Sound, the Corps was faced with the prospect of having to continue to select new disposal sites that could only be used for a maximum of two five-year periods. In the long-term, this would result in the proliferation of disposal sites throughout the Sound. And that's why we are here today.

In 1998, EPA and the Corps agreed to conduct a formal site designation process following the criteria established in the Ocean Dumping Act. We also agreed that, consistent with past practice in designating dredged material disposal sites, that we would follow EPA's Statement of Policy for Voluntary Preparation of National Environmental Policy Act, or NEPA, Documents, and would prepare an Environmental Impact Statement to evaluate different dredged material disposal options. EPA and the Corps have tried to prepare this Draft EIS to be consistent with EPA's NEPA-implementing regulations, as well as those promulgated by the Council on Environmental Quality for additional guidance. We began this effort in 1999, but were slowed by both the technical complexities and the financial constraints associated with a large-scale

multiple-site project.

In March, 2002, facing the prospect of losing the use of the Corps-selected Central Long Island Sound disposal site, the most heavily used of the four current disposal sites in the Sound, in February of 2004, when the second of the two five-year periods of use expires, EPA and the Corps announced their intent to develop the EIS in two phases, Western and Central Long Island Sound first, followed by the Eastern Sound once a site or sites have been designated in the western and central regions. This approach would yield a schedule that meets the important public need to consider disposal sites in this region more expeditiously, without compromising the continued objectivity of the decision-making process for each region of the Sound.

Although EPA is the agency authorized by the Ocean Dumping Act to designate dredged material disposal sites, the Corps is participating in the development of the EIS as a cooperating agency, because it has the knowledge concerning the needs of the dredging program, as well as technical expertise in assessing the environmental effects of

dredging and disposal. As a result of the 1998 agreement between EPA and the Corps, the Corps is also providing technical and financial support in the development of the EIS, but all final decisions regarding any site designations will be made by EPA. To take advantage of expertise held by other entities, and to ensure compliance with all applicable legal requirements, EPA is also closely coordinating the effort with other federal agencies, including the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, Indian Tribal governments, state environmental and coastal zone management agencies, and local governments, some of which are participating as cooperating agencies. EPA and the Corps also have conducted extensive public participation activities, including numerous workshops and informational meetings to explain the process and disseminate technical findings, and to solicit feedback from the public to help guide the process.

We are here today to present information on the Draft EIS that evaluates disposal options for the Western and Central regions of Long Island Sound, and to solicit

feedback on this document and the federal action it proposes in the form of oral or written comments. We encourage and welcome your oral and written comments, but will not be responding to them here today. These comments will be given equal consideration upon completion of the public comment period for the purposes of finalizing the EIS and issuing final rulemaking. The final EIS will include responses to all comments that we receive. For accuracy of the record, your written comments should be sent to Ann Rodney at the EPA New England Regional Office, and you should have her address -- she is at the back of room if you are looking for it -- and will be accepted until close of business on Monday, November 17th. That is next Monday.

Thank you again for your participation in this public hearing, and for your interest in the issue of dredged material management in Long Island Sound.

Now, I'll turn it over to Mark Habel. MR.

HABEL: Thank you, Mel.

As Larry said earlier, my name is Mark Habel. I am the Corps of Engineers New England

District Project Manager for this study.

In early 1998, EPA and the Corps began their study of the need for, and acceptability of, designating ocean disposal sites for dredged material in Long Island Sound. An early part of this effort involved examining the present and long-term need for dredging from the ports and harbors of the Sound in both Connecticut and New York.

There are more than 50 federal navigation projects and hundreds of non-Federal public and private navigation-dependent facilities on the Sound that require periodic dredging to maintain safe navigable depth. Vessels from large cargo carriers to small fishing and recreational craft depend on adequate channel depths to operate.

Some material dredged from these harbors is clean sand, suitable for use as nourishment of area beaches when available.
However, the majority of all material dredged from the Sound's harbors has, for many decades, been placed at open water sites in the Sound. Prior to the 1980s, there were as many as 20 sites in the Sound that periodically received dredged material.

Since that time, only four sites have been in use, and these receive on average about one million cubic yards of material annually. All of this material must undergo a rigorous series of physical, chemical, and biological testing to prove its suitability for placement in the Sound.

An investigation into the economic importance of navigation-dependent industries to the Long Island Sound region found that these industries contribute more than 52,000 jobs and over $5.5 billion annually to the economy of the area. Dredging is the key to the continued health of this sector of the Connecticut and New York economies.

Please take time to examine the poster displays located in the lobby. One of these shows the locations of the several "dredging centers" located around the Sound. It is these ports and harbors that generate the economic benefit of navigation and the region's dredged material.

This study focused on consideration of the impact on the natural and human environment, including natural resources and economics. It was concluded that the capacity of non-in-water

disposal alternatives cannot meet the dredged material disposal needs of the Central and Western Long Island Sound region. While individual projects must assess nonopen water alternatives on a case-by-case basis, designation of one or more open water dredged material disposal sites in Long Island Sound is necessary to meet the long-term regional needs of navigation in the Sound.

At this point, I would like to introduce Dr. Carleton Hunt of Battelle and Dr. Drew Carey of Coastal Vision, who will give you a presentation of the EIS process and findings.

DR. CARLETON HUNT: Thank you, Mark. Thank you also for coming out today to participate in this process.

What we would like to present this afternoon are four basic themes: Number one is to provide an overview of the EIS process; second is to provide a -- present a set of findings from the Draft EIS and then review the preferred alternatives that have been put forth; the last thing we want to do is convey the next steps that will be undertaken.

As you've heard, there was a decision

taken in 1998 to prepare the EIS. The Notice of Intent went out. Once that Notice of Intent went out, a series of scoping meetings were held. The scoping meetings provided input and information on factors that should be included and evaluated in the EIS. In addition, literature research and field studies were conducted to develop data to support the decision process. That information was brought together in the Draft EIS that you have before you. In addition, an SMMP, Site Management and Monitoring Plan, was developed for each of the sites.

We're in this 45-day public comment period, and the public hearings are ending today. Once that is complete, the comments, as you've heard, will be addressed, looked at, evaluated, and a Final EIS will be prepared and put forward along with the final rule. That will be followed by a 30-day comment period, a Record of Decision as to what the Federal government's final decision will be will follow.

I'm going to turn this over to Drew Carey, who is going to speak to you now about the history of the Long Island Sound EIS process, and

then I'll pick it up again when the program started around 2002, I believe it is.

DR. DREW CAREY: Thanks, Carleton.

I assume I need to use this mike. Yeah, all right. I am going to stay on the short lead here.

I'm going to start really with the first phase of the project, walking through a couple of steps, and then we'll pass it back to Carleton.

I'm going to cover these four topics, from the initial announcement of the project that has been mentioned a few times already, how the cooperation was managed between all the agencies with interest in this process, the public involvement aspects in each of these I'll go into more detail, and give you some introduction to the first phase of studies that were conducted throughout Long Island Sound.

Really, we started with that Notice of Intent in June of 1999 that the critical thing here is that this intent was to consider designation of one or more potential open water dredged material sites. That was the starting point. At that time,

the action was taken in cooperation with the Corps of Engineers, and a number of initiatives were taken to involve all the related federal and state agencies. I want to talk about that part first.

Essentially, an interagency working group was formed rather informally in a sense that it didn't meet on a regular basis, but an as-needed basis. A variety of different topics were discussed by that group, and how the process worked is that after a topic had been discussed with the interagency group, it moved into a public involvement phase, and I will address that in just a moment.

Some of the things that were then initially discussed were to really make sure that in the process of developing an EIS, it was clear what the goals and topics were: What did we already know about the history of disposal in this region; what would the process be to go about investigating potential site designation; and then going ahead with the scoping process, and the scoping process is very critical. It defines really what the direction of the process will be, and what the document will look like in the end,

what kinds of studies need to be done.

So at this stage, we're really interviewing experts at different agencies, talking to folks, who have a history of involvement in the region, and asking them what they felt additional studies needed to be conducted before this document could be prepared.

Another critical issue is defining what's the zone in which you're willing to look for potential designation of a site, and this is a process that is defined in the regulations, balancing both economic constraints and environmental components. And Carleton will come back to this at the end of my piece here.

It's also important to consider any alternatives to open-water disposal. This process was not set up to actually designate any alternative, but it's important to look at the big picture, what alternatives might there be to designation of an open-water disposal site, and I'll come back to that.

Once the data collection had been done and this interagency group looked at those results, had a lot of feedback on them, and when we went

forward from the study results to do the selection of potential alternatives for review, the interagencies groups met again for quite along session to look at those potential. And then at the point when a preferred alternative was recommended, this was a process that was really initiated at the interagency group.

Now, if we switch to the public involvement, keep in mind that this is essentially an iterative process as the working team and then the interagency group came up with some guidelines and recommendations. It moved into a public involvement phase. So initially then, there were public scoping sessions held in which the -- similar to today. The public was informed about the process, and there was an opportunity for comments about what kinds of studies should be conducted, what concerns or issues were held by the public.

Then in October of '99, we initiated a series of public workshops. These were intended to be informative, offer an opportunity for dialogue and discussion; initially, the process for trying to determine what the needs would be for dredging over a 20-year period; how we might go through a

site-screening process and evaluate the data. These were all topics of workshops.

In addition to that, we formed a volunteer working group, which was really intended to be a smaller group that could be more focused. It was really open to anyone who was interested in participating, but it was of a more focused and in-depth scale than a public workshop. It included industry representatives, recreational boating, recreational fishing, commercial fishing, environmental groups, some of the local towns showed up, and there were even individuals, who just had a strong interest in this particular topic.

To give you an idea of the schedule, we started out in 1999, and then there were a couple of -- there was a workshop in 2000, another one in the summer of -- a working group in the summer of 2000. That was really the point where we were defining what the studies would be done; and then after data began coming back, you'll notice that the pace of meetings picked up quite a lot. There were quite a few working group meetings then in 2002, culminating in the presentation of the

findings, and the potential preferred alternative in September of this year.

I'll go over then the initial studies that were performed, looking at how that was defined. I'll go into detail in each one of these, looking at how we did the field data collection; what upland alternatives were examined, including types of treatment technologies that were considered; and the assessment of the dredging needs; and the economic significance of navigation in this region.

The process of defining the studies, as I mentioned, was partly a component of gathering experts, partly input from the public, and then definition to the team of both the EPA and the Corps. We designed a process to take advantage of the fact that disposal activities occurred in the Sound in a very well-monitored way for over 25 years. Disposals happened here much longer than that, but we have a very good record of the last 25 years of disposal. So there are certain locations within the Sound that have been used as disposal sites, well monitored, and we essentially defined it as a data collection process that

allowed us to both collect baseline data for potential alternatives, as well as look at potential impacts that may have occurred from that dredging activity over the last 25 years.

One of the criteria that's included that both Carleton mentioned, and I believe Mark mentioned, is that you need to look at historical disposal sites. So straightaway, we knew that the four historical sites within the Sound that are currently being used needed to have extensive baseline data to add to the monitoring data, and they were the focus of that activity initially.

We did physical analysis, chemical analysis, toxicological analysis in order to determine whether the material that exists at these sites, both at reference areas and within the site, has any toxic effects on organisms, and also looked at the kinds of animals that actually live at those sites at the current time.

In addition to this, in 2000, we coordinated with the Connecticut Department of Environmental Protection that does an in-shore trawl survey several times a year. It was an opportunity to go out and collect fish from that

trawl survey and do analysis of their tissue for contaminant levels within the tissue. In addition to that, explicit sampling was done of worm, clam and lobsters throughout the Sound. So this was a Sound-wide survey of fishing -- I'm sorry -- of fish and invertebrate tissues. In addition to that, we took the data collected by the Connecticut DEP trawl survey over about an 18-year period, coincident with the dredging and disposal activity, and examined the fish population structure, their abundance and distribution throughout the entire Sound, and in relation to those four established sites to determine a baseline of fish over a long period of time, and also any potential responses to disposal activity.

It was important to look again on a regional basis as what alternatives there might be to open-water designation -- or a designation of an open-water site. There is a series of processes that can be applied to dredged material in some locations, both within the Sound and elsewhere, dredged materials of a particular quality that it could be used, for instance, for beach nourishment. Not all the material that is dredged is suitable

for that, and so it's important to get an understanding of what kinds of materials might be dredged, and where they might be placed other than at an open-water site. There is also a lot of work that has been done in the New York/New Jersey area on trying to take sediments that are perhaps unacceptably contaminated and looking at various treatment technologies that can either stabilize or remove the contaminants from those materials.

The most crucial sort of question you have in this kind of process is how much dredging do you expect to be done, because that really defines your need for any kind of designation, or to give you a sense of whether these alternatives are viable for the volumes that we're talking about.

A survey was conducted of both private and federal and state facilities that may need to dredge over a 20-year time period. I won't go into a lot of the details, but that was a very extensive survey. The bottom line was that federally approved navigational channels have a cycle, and the federal projection of the need for dredging to maintain those channels over 20 years is just shy

of 23 million cubic yards. All the other federal projects, it might be a Coast Guard berthing area, or another federal facility that is not one of these authorized maintenance projects, and all the private projects put together add up to slightly more than 9 million cubic yards over this time period.

In addition to maintaining existing channels, and berthing, and marina areas, there are projections at both private and federal facilities for some either deepening or expansion of berthing areas and some channel work. This amounted to a little bit under 1.3 million cubic yards. So that essentially establishes the envelope of material that you need to find some solution for over this time period.

That data was grouped into what we call dredging centers. This is a fairly standard way of looking at this so that we can look at essentially a regional distribution of the needs of dredging within the Long Island Sound region. I won't go into detail here, except to point out that the blue represents those federal navigation projects, and this gray represents areas that are private

projects. So you can see that in Stamford, well over -- sorry. Stamford is here (indicating). Well over 50 percent of the need is federal; in Bridgeport, it completely dominates that area in terms of a large projected project.

You'll also notice that on the north shore of Long Island, the majority of the dredging is private and is of a much smaller volume than seen here in Connecticut. So this is the sort of thing that allows us to understand, within different regions of the Sound, what might the needs be, and what is the nature of those needs over time.

The Second very important part of defining the problem is really asking the question: What would happen if you did not maintain navigation channels? In other words, what economic activity is dependent on having access to a navigational channels? This includes boating, fishing, a variety of commercial activities, the ferries, freight transport. When you add up all the numbers, you're in the billions of dollars of economic activity dependent on some sort of access to navigational facilities. This is broken down

into a lot of details. It's in a section of the overall EIS. But it's important to note that this essentially tells us that navigation within Long Island Sound has a very significant economic impact.

The findings then of the initial phase of the study were that indeed, dredging these rivers and harbor areas along the coast of the Sound are essential to the economic welfare of the region. If you look at that total economic impact relative to the economic scale of the region, it's a significant piece.

Secondly, despite an extensive survey of upland locations within the region, investigation of beneficial use opportunities, and all the different treatment technologies that have been investigated in detail, they don't add up to sufficient capacity or sufficient activity to account for those -- I can't add it up in my head, but close to 30 million cubic yards of material required for disposal over 20 years.

It's important to note, however, that every individual project must investigate alternatives to open-water disposal. So this data

that has been collected and organized is a backdrop to each individual project's determination of where that material will need to go. So a small-scale project on an individual basis may well fit in with beneficial use, or an upland location, or even a treatment technology. But as a whole, looking at the entire region in a 20-year period, it is not sufficient to meet the capacity. As a result of that, those three points really, it's clear that one or more open-water dredged material disposal sites would need to be designated in the Sound in order to meet those needs.

I'm going to turn it back over to Carleton, who will speak in a little bit more detail about the ZSF.

There you go.

DR. CARLETON HUNT: Thank you, Drew.

In March, 2000, the agencies looking at the situation in the Western and Central part of Long Island Sound, determined that modifications to the Zone of Siting Feasibility that Drew was talking about, were required. The essential points on that were that that was needed to happen in order to address the dredging issues of the Western

and Central parts of the Sound in a timely manner; and secondly, because those two regions of Long Island Sound are geographically distinct, and allow for focusing of the energy into those two regions.

I point out also very quickly that the modification does not include consideration, again, as Drew has just mentioned, of a comprehensive range of disposal alternatives on a project-specific basis.

In this process, that didn't stop the review of Eastern Long Island Sound for disposal sites. Rather, it just deferred the process that would be conducted as a Supplemental EIS.

This slide basically shows the Zone of Siting Feasibility. The original extended from Block Island Sound to the west through Block Island Sound, Eastern Long Island Sound down to the western parts of the Sound in the New York region. The modification essentially took that Zone of Siting Feasibility and extended it from the confluence of the East and Harlem Rivers, the previous western boundary, eastward to the line you see here as it extends between Mulberry Point and Guilford, Connecticut, to Mattituck Point in New York. This is the region that this EIS is focusing

on.

In order to get to the open water alternatives that were considered in the EIS, a geospacial representation of data was conducted using GIS, geographic information system layers.

The layers were developed based on the screening criteria that were developed throughout the process. Those include five general and eleven specific criteria that are included in the Marine Protection Sanctuaries Act for ocean dredged material site designations. Those criteria were addressed and modified and added to through the process that was described earlier in terms of scoping to provide additional factors and specifics that needed to be evaluated. Once that process was completed, the information was put together into a set of layers that were organized into two tiers.

The first tier ruled out areas that were not acceptable for open-water disposal, that were clearly not acceptable.

The second tier was used to identify specific locations in the remaining areas that were about to be evaluated and, in fact, find the specific footprints that are included in the EIS.

Tier 1 ruled out areas based on consideration of sediment stability and the feasibility of monitoring and evaluation. Areas of conflicting use, for example, beaches and amenities, utilities, i.e., pipelines and cable areas; conservation areas were also excluded; shellfishing areas that were identified were excluded from this -- in this process; areas that would interfere with navigation were also excluded; another exclusion was valuable marine habitats, herein defined as being gravel and hard bottom areas that provide significant structure on the steep floor; and lastly, areas of high dispersion potential. The concept behind that is to have a site within which material to be placed would be contained.

Tier 2 again identified site locations based on two important premises: Minimizing impact to a variety of features; and secondly, siting in areas that are based on certain sediment characteristics. Under the minimizing of impact under Tier 2 that were evaluated included such things as archeological resources; fish habitats; fish productivity, areas that have significant

importance there; living resources; the benthic -- type of benthic community; and shellfish resource areas.

In terms of the site characteristics, considerations were made to the contaminants, i.e., type of sediment chemistry that was in the sites and area; and lastly, the texture of the sediments. The site designation criteria that are included in MPRSA include criteria that points to use of historic disposal sites when they are present. That, again, was a factor that was included.

During the process, the EPA, Corps, and the cooperating agencies identified four alternative sites that would be carried forward into the EIS from a number of sites that were examined. The four of those -- two of those four sites were existing sites, and two were former dredged material disposal sites that are on record. Those sites are -- that are existing are WLIS, in the western part of Long Island Sound; and CLIS, in the central part of Long Island Sound. The two sites that are historic are Bridgeport and Milford.

During the process, it became clear that the data to evaluate Bridgeport and Milford

specifically was not sufficient. Therefore, the agencies embarked on a process of developing data that would fill that gap. That data set was

then -- was developed around sediment chemistry; the benthic community structure; sediment toxicity; habitat and sediment bulk characteristics; the bottom topography and the historic usage of the site; lobster resources -- and lobster resources. That data collection effort ended in August of 2002. That information, along with the information I spoke to earlier in this presentation, were used then to evaluate the four sites for their environmental and economic conditions, and the consequences of using each of those five alternatives for this dredged material EIS.

The EIS that is before you has a number of chapters. Very briefly, Chapter 1, the Introduction, introduces the history of dredged material disposal in Long Island Sound and defines the scope of the EIS, as well as the regulations and authorities that regulate this process of site designation.

The Purpose and Need describes the purpose, why this is being conducted, the need for

it, and conveys the reasons that an open-water site is being considered.

Chapter 3 describes the alternatives I've just mentioned, to include the no-action alternative, and it also includes a summary of the preferred action.

Chapter 4 is an extensive evaluation of the affected environment, both at the Long Island Sound Central and Western regions level, as well as specific baseline information for the specific alternative sites that we're conducting.

Chapter 5 describes the environmental consequences of using any one of those five alternatives, both at a general level. There is a section there that describes what we know about dredged material disposal in the marine environment. There is also then specific discussions for each site, and a recommendation for the preferred alternatives to include the details of that decision for the preferred alternative.

Chapters 6, 7, 8, 9 and 10 are -- list important information about the authorities that regulate this public involvement; the references used to make the evaluation; preparers; and a list

of the agencies and organizations and people to whom this Draft EIS was distributed to. I point out that Appendices A through J as being very specific documents that are heavily detailed with the science and studies -- and economic studies that went into this process.

Appendice J carries two site management and monitoring plans, one for each of the sites.

The preferred alternatives then are WLIS and CLIS. The reasons for recommending these are summarized as follows: Those two sites were found to have the least potential environmental and economic impact when compared to the other three alternatives.

There were environment -- potential environmental impacts identified at Bridgeport and Milford, and those impacts could not be mitigated through various site management practices that could have been applied; and, therefore, because of the environmental information and those mitigation factors were not considered. The No Action also was found to not be a preferred alternative, because of greater economic, as well as impacts to the region and some greater environmental impacts.

Once that process was completed and evaluating the data and information that was available, it was found that the two sites that were preferred required some reconfiguration in order to address some specific issues that I'll mention in a moment. I point out also that the reconfiguration really does not change the conclusion for the preferred alternatives, because of the type of change that occurred.

For WLIS, the site reconfiguration essentially was to lift -- or not lift, but move the site itself to the north and west, approximately 1,100 feet west and 607 feet to the west to get out of a shoaling area -- oh, no -- to move that site from the shoaling area that was to the south and east corner. So in this figure, basically, the bold line is the new preferred alternative that is carried forward.

In terms of CLIS, it was determined that there are two former dredged material disposal mounds that were outside of the boundary that was evaluated. In order to bring those two boundaries into the site and ensure proper effective management, the northern boundary was moved

slightly north, and the eastern boundary slightly to the east.

The process we're in right now is to -- is finishing the public comment period. Comments -- as we've indicated before, comments will be addressed, and the Final EIS will be produced, and it will be -- the comments will, in fact, be included in -- responsive comments will be included in an appendix to the Final EIS.

Once that's completed, the Final Rule and final publication will be distributed through the Federal Register. There will be a 30-day comment period on that Final Rule and EIS. The Record of Decision would then be published, and finally the decision for -- from the federal government would be put forward.

This concludes our portion of the presentation. I would like to turn the podium back to the Moderator for your comments.

MODERATOR ROSENBERG: Ladies and gentlemen, it is crucial for this public process that your voice is heard, and we are here to listen, to listen to your comments, to understand your concerns, and to provide you an opportunity to

put your thoughts on the record should you care to do so.

You know, as a direct result of having this type of open process, we have been able to overcome many of the difficulties other agencies face when performing activities that directly or indirectly affect the environment and the quality-of-life issues that surround such activities. Once again, we stand before you asking for your expertise to help us seek solutions so that together we can identify, evaluate, and build a process that seeks solutions. Although we're here today to continue a process for the designation of dredged material disposal sites in the Central and Western regions of Long Island Sound, we do indeed need your participation throughout this entire process. And once again, I thank you for contributing.

The hearing today and tonight will be conducted in a manner so that all who desire to express their views will be given an opportunity to do so. To preserve the right of all to express those views, I ask that there be no interruptions. Furthermore, in order to make any decisions

regarding the designation of dredged material disposal sites in Central and Western regions of Long Island Sound, we, the Environmental Protection Agency and the United States Army Corps of Engineers, once again need to have you involved in this entire review.

When you came in, copies of the Federal Register Notice and the Procedures to be followed at this hearing were available. If you did not receive these, both are available at the entrance to the hall. I will not read either the Procedures or the Federal Register Notice, but they will be entered into the record. A transcript of this hearing is being prepared and the record will remain open, and written comments may be submitted today or by mail until 5 p.m. on November 17th. All comments receive equal consideration.

Anyone who cannot attend that you know of, but who would like to send written comments, or you may indeed forward written comments to Ann Rodney at the EPA's New England office in Boston, Massachusetts.

Lastly, I would like to re-emphasize that the government has made no final decisions

with regards to this project. It is our responsibility to fully evaluate the impacts of designating dredged material disposal sites in the Central and Western regions of Long Island Sound, and prior to any government decision. In order to accomplish that, we need you.

Again, we are here to receive your comments, not to enter into any discussion of those comments, or to reach any conclusions. Any questions you have, please direct them to the record, and not to the individuals on this panel.

Mr. Cote, if there is no objection, I would now dispense with the reading of the Federal Register Notice of the hearing and have it entered into the record.

MR. COTE: You may do so.

MODERATOR ROSENBERG: Thank you.

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Federal Register Proposed Rules Vol. 68,

No. 177
Friday, September 12, 2003 ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-7553-9]

Ocean Disposal; Proposed Designation of Dredged Material Disposal Sites in the Central and Western Portions of Long Island Sound, CT

Agency: Environmental Protection Agency (EPA). Action: Proposed rule.

SUMMARY: EPA today proposes to designate two dredged material disposal sites; Central Long Island Sound (CLIS) and Western Long Island Sound (WLIS) located offshore from New Haven and Stamford, Connecticut, respectively, for the disposal of suitable dredged material removed from the central and western portions of the Long Island Sound region of Connecticut, New York and other nearby harbors or dredging sites. This action is necessary to provide long-term dredged material disposal sites for the current and future disposal of this material. The proposed site designations are for an indefinite period of time. The sites are subject to continuing monitoring to ensure that unacceptable, adverse environmental impacts do not

occur. The proposed action is described in the Draft Environmental Impact Statement (DEIS), and the monitoring plans are described in the CLIS and WLIS Site Management and Monitoring Plans (SMMPs). The SMMPS are provided as appendix J of the DEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site is subject to project-specific reviews and authorization and still must satisfy the criteria for ocean dumping.

DATES: Comments must be received by 5 p.m. on October 27, 2003. Public hearings dates:

1. September 30, 2003 in NY from 1 p.m. - 5 p.m. and 6 p.m. - 10 p.m.

1. October 1, 2003 in CT from 1 p.m. - 5 p.m. and 6 p.m. - 10 p.m.

ADDRESSES: Written comments should be sent to: Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114-2023 or electronically to Rodney.Ann@epa.gov.

The public hearing locations are:

1. September 30, 2003 - New York SUNY at Stony Brook, Stony Brook, NY 11794-1603. The meeting will be held inside the "Charles B. Wang Asian-American center".

2. October 1, 2003 - Westin Stamford, One First Stamford Place, Stamford, CT 06902.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114-2023, telephone (617) 918-1538, electronic mail: RodneyAnn@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Review of Documents: The file supporting this proposed designation is available for inspection at the following locations:

1. In person. The Proposed Rule and the Draft Environmental Impact Statement (DEIS) which includes the SMMPS (Appendix J), are available for inspection at the following locations: A. EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA

02114-2023. For access to the documents, call Peg Nelson at (617) 918-1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. Mamaroneck Public Library Inc., 136 Prospect Ave., Mamaroneck, NY. C. Port Jefferson Free Library, 100 Thompson Street, Port Jefferson NY. D. Bridgeport Public Library, 925 Broad Street, Bridgeport, CT. E. Milford City Library, 57 New Haven Ave., Milford, CT. F.

New Haven Free Public Library, 133 Elm Street,

New Haven, CT. G. New London Public Library, 63 Huntington Street, New London, CT. H. Norwalk Public Library, 1 Belden Ave., Norwalk, CT. I. Acton Public Library, 60 Old Boston Post Road, Old Saybrook, CT. J.

Ferguson Library, 752 High Ridge Road, Stamford, CT.

2. Electronically. You also may review and/or obtain electronic copies of these documents and various support documents from the EPA home page at the Federal Register http://www.epa.gov/fedrgstr/, or on the EPA New England Region's homepage at http://www.epa.gov/region 1/eco/lisdreg/.

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA authority to designate sites where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The CLIS and WLIS sites are located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dumping sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at 40 CFR 228.15. This rule proposes to designate two sites for open water disposal of dredged materials. These sites are currently being used under the authority of MPRSA Section 103 and are located in the western and

central regions of Long Island Sound.

The primary authorities that govern the aquatic disposal of dredged material in the United States are the CWA and the MPRSA. All dredged material disposal activities in Long Island Sound, whether from Federal or non-Federal projects of any size, are subject to the requirements of Section 404 of the CWA, 33 U.S.C. 1344. In 1980, the MPRSA was amended to add Section 106(f) to the statute. 33 U.S.C. 1416(f). This provision is commonly referred to as the "Ambro Amendment," named after Congressman Jerome Ambro. MPRSA section 106(f), 33 U.S.C. 1416(f) was itself amended in 1990. As a result of this provision, the disposal of dredged material in Long Island Sound from both Federal projects (projects carried out under the Corps civil works program or the actions of other Federal agencies or from non-Federal projects involving more than 25,000 cubic yards (19,114 cubic meters) of material must satisfy the requirements of both CWA section 404 and the MPRSA. Disposal from non-Federal projects involving less than 25,000 cubic yards (19,114 cubic meters) of material, however, are subject to

CWA section 404 only.

The two dredged material disposal sites in Long Island Sound being proposed in this action are necessary to provide long-term disposal options for the Corps to maintain deep-draft, international commerce and navigation through authorized federal navigation projects and to ensure safe navigation for public and private entities. One of the proposed sites is in the central portion of the sound, while the other is in the western portion of the sound.

The sites will be subject to continuing site management and monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The management of the sites is further described in the draft Site Monitoring and Management Plans (SMMPs) for CLIS and WLIS

(appendix J of the DEIS). Documents being made available for public comment by EPA at this time include this proposed rule, DEIS, and Draft SMMPS (appendix J of DEIS).

The designations are being proposed in accordance with 40 CFR 228.4(e) of the Ocean Dumping Regulations, which allow EPA to designate

ocean sites for disposal of dredged materials.

B. Regulated Entities

Entities potentially regulated by the proposed rule are persons, organizations, or government bodies seeking to dispose of dredged material in waters of Long Island Sound, under the MPRSA and its implementing regulations. The proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the Corps to transport dredged material for the purpose of disposal into the waters of the central and western regions of Long Island Sound, and (b) to the Corps itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material disposal sites and would be subject to this Rule may include:

Category/Examples of potentially regulated entities

Federal Government...U.S. Army Corps of Engineers Civil Works Projects, and Other Federal Agencies.

Industry and General Public...Port Authorities,

Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.

State, local and tribal governments...Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table lists the types of entities that could potentially be regulated should the proposed rule become a final rule. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., requires that Federal agencies

prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations (See 63 FR 58045 (October 29, 1998), "Notice of Policy and Procedures For Voluntary Preparation of National Environmental Policy Act (NEPA) Documents." Consistent with this policy, EPA, in cooperation with the U.S. Army Corps of Engineers, has prepared a DEIS entitled, "Draft Environmental Impact Statement for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York, dated August 2003" which considers the environmental aspects of site designation in central and western LIS. A Notice of Availability of the DEIS for public review and

comment is being published concurrently with this Proposed Rule in today's Federal Register. Anyone wishing to review a copy of the DEIS may do so in one of the ways described above (see ADDRESSES).

The public comment period for this DEIS will close on October 27, 2003. The public comment period on the Proposed Rule Publication will also close on October 27, 2003. Comments may be submitted by one or more of the methods described above.

The purpose of the proposed action is to designate open water disposal sites that will meet long-term dredged material disposal needs in LIS. The appropriateness of open water disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit/authorization process governing the open water disposal of dredged material.

Designation of an open water disposal site under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean open water disposal activity is permitted under 40 CFR part 227, then such disposal should be normally be consolidated at the

designated sites (see 33 U.S.C. 1413(b)). Designation of open water disposal sites does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for open water disposal under the applicable regulatory criteria. Nevertheless, EPA has determined that it is appropriate to designate open water disposal sites for dredged materials in the central and western Long Island Sound now, because it appears unlikely that feasible alternative means of

managing dredged material will be available to accommodate the projected dredged material of this region in the future.

Proposals for the open water disposal of dredged materials from individual projects are evaluated by EPA New England and the Corps' New England District on a case-by-case basis, taking into account all the alternatives available at the time of permitting. Beneficial reuse alternatives will be preferred over open water disposal whenever they are practicable.

The DEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential open water disposal sites for dredged material from Connecticut and surrounding harbors, as well as potential alternative means of managing these dredged materials other than open water disposal.

As described in the DEIS, the initial screening evident was established to consider the most environmentally sound, economically and operationally feasible area site designation. Alteratives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the open water disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries, and shellfisheries, natural resources, shipping and

navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following four open water alternative sites: Central LIS (CLIS), Milford, Bridgeport and Western LIS (WLIS). These sites were evaluated and two sites were selected as preferred alternatives for potential site designation. Management strategies were developed for the preferred alternatives and are described in the SMMPs.

To obtain public input during the process, EPA and the Corps held public workshops and scoping meetings, as well as convened an EIS working group. The purpose of the working group was to assist in identifying and evaluating the best long-term dredged material disposal options for Long Island Sound. Representatives from state, local, tribal and federal agencies were invited to participate in the working group as well as individuals representing other interests. The working group assembled for a series of five meetings between July 2000 and November 2002.

Comments received were factored into the development of the DEIS. The NEPA process led to the current proposal that CLIS and WLIS be designated as open water dredged material disposal sites.

D. Proposed Sites Descriptions

The two sites, CLIS and WLIS, are proposed for designation. Draft SMMPS have been prepared for the two proposed open water disposal sites and are available for review and comment by the public. (Copies may be obtained by request from the FURTHER INFORMATION CONTACT listed in the introductory section to this proposed rule.) Use of newly-designated open water disposal sites would be subject to any restrictions included in the site designation and the approved SMMPS. These restrictions will be based on a thorough evaluation of the proposed sites pursuant to the Ocean Dumping Regulations and potential disposal activity as well as consideration of public review and comment.

Central Long Island Sound (CLIS). The CLIS site proposed for long-term designation by EPA is currently in operation under the Corps'

short-term site selection authority. It has been one of the most active dredged material disposal sites in New England. Overall, CLIS has received close to 14 million cubic yards (11 million cubic meters) since 1941. The site was used prior to enactment of MPRSA in 1972 and continued to be used thereafter. Between 1982 and 2001 CLIS received approximately 7 million cubic yards (5.4 million cubic meters), with an average annual volume of 350,000 cubic yards (268,000 cubic meters). The site is a rectangular area, approximately 2 nautical miles by 1 nautical mile, located 5.6 nautical miles south of South End Point near East Haven, Connecticut, in water depths from 59 to 74 feet (18 to 22.5 meters). The sediments at the site are predominantly uniform clayey silt with an area of mixed sand, clay and silt. These sediments are typical of those found in fine-grained depositional environments of the central basin of Long Island Sound. This proposed rule would designate the CLIS site with boundaries slightly changed from the current site. The CLIS boundary was reconfigured so that the northern boundary was moved by 700 feet (215 meters) and the eastern

boundary was moved by 1,230 feet (375 meters) in order to include two previously used disposal mounds (FVP, CS2) which are currently outside of the existing site boundaries. This reconfiguration will allow for management and monitoring of the FVP and CS2 mounds. The coordinates (North American Datum 1983: NAD 83) for the proposed CLIS site, are as follows:

CLIS

41¦ 09'5"N, 72¦ 54'4" W.

41¦ 09'5"N, 72¦ 51'4" W. 41¦ 08'4"N, 72¦ 54'4" W. 41¦ 08'4"N, 72¦ 51'5" W.

Western Long Island Sound (WLIS). The WLIS site proposed for long-term designation by EPA is currently in operation under the Corps' short-term site selection authority.

The site is a rectangular area, 1.2 by 1.3 square nautical miles (2.2 by 2.4 kilometers) that has been use for dredged material disposal since 1982. After completion of an EIS, the site was established in 1982 as a regional dredged material disposal site to serve the needs of the

western area of Long Island Sound. Between 1982 and 2001, WLIS received 1.7 million cubic yards (1.3 million cubic meters), with an average annual volume of 85,000 cubic yards (65,000 cubic meters). The site is located 2.7 nautical miles north of Lloyd Point, New York and 2.5 nautical miles (4.6 kilometers) south of Long Neck Point near Noroton, Connecticut, in water depths of 79 to 118 feet (24 to 30 meters). The sediments at the site are heterogeneous, with clay silt in the northeast corner and a mixture of sand-silt-clay in the center and southeast corner. These sediments are typical of those found in fine-grained depositional environments of the western basin of Long Island Sound. In addition to the ambient silts from this region, there are deposits of material of mixed grain sizes dredged from harbors and navigation channels throughout the western basin. This proposed rule would designate the WLIS site with boundaries which have been slightly reconfigured. The WLIS boundaries have been shifted to the west by approximately 1,106 feet (337 meters) and to the north by 607 feet (185 meters). This shift move will relocate the WLIS site out of a rapidly

shoaling area. The coordinates (North American Datum 1983: NAD 83) for the proposed WLIS site, are as follows:

WLIS

41¦ 00'1"N., 73¦ 29'8"W.

41¦ 00'1"N., 73¦ 28'0"W. 41¦ 58'9"N., 73¦ 29'8"W. 41¦ 58'9"N., 73¦ 28'1"W.

E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Five general criteria are used in evaluating possible dredged material disposal sites for long-term use under the MPRSA (see 40 CFR 228.5).

General Criteria (40 CFR 228.5)

1. Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas. The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this proposed rule, a determination was made to overlay individual uses

and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Both the CLIS and WLIS disposal sites showed minimum interference with other activities. The proposed sites do not interfere with lobster or fishing activities, although the areas surrounding the disposal sites provide good lobster habitat. The two proposed sites are also not located in shipping lanes or major navigation areas and otherwise have been selected to minimize interference with fisheries, shellfisheries and regions of commercial or recreational navigation.

2. Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site. The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing

caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The proposed sites will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA sediment quality criteria. No significant contaminant or suspended solids released are expected. Based on data evaluated as part of the DEIS, disposal of either sandy or fine-grained material would have no long-term impact on water quality at the proposed sites. In addition, dredged material deposited at the sites and water quality perturbations are not expected to reach any marine sanctuary, beach or other important natural resource area.

3. Interim Sites Which Do Not Meet Criteria. There are no interim sites to be considered under this criterion. The CLIS and WLIS proposed sites are not interim sites as defined under the Ocean Dumping regulations.

4. Size of sites. The fourth general

criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration and location is to be determined as part of the disposal site evaluation. For this proposed rule, EPA has determined, based on the information presented in the DEIS, that the sites have been sized to provide sufficient capacity to accommodate material dredged from the harbors and channels of Long Island Sound. The existing site boundaries of the CLIS site have been reconfigured to include two previously used disposal (FVP and CS2) mounds that were outside of the existing boundary. Inclusion of these mounds within the CLIS disposal site boundary will allow for management and monitoring of the mounds. The WLIS site has also been reconfigured. The WLIS boundaries were moved to the north west to avoid a rapidly shoaling area. The management and monitoring plans are described in the CLIS and WLIS SMMPs (Appendix J of the DEIS).

5. EPA must, wherever feasible, designates dumping sites beyond the edge of the continental shelf and where historical disposal has occurred. The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other sites that have historically been used.

Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the proposed sites, if designated, encompass the footprint of historically used sites. Thus, the proposed disposal sites are consistent with this criterion.

As discussed briefly above, EPA has found that the CLIS and WLIS disposal sites satisfy the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these criteria can be found in the DEIS and SMMPs.

In addition to the general criteria discussed above, 40 CFR 228.6(a) lists eleven specific factors to be used in evaluating a proposed disposal site under the MPRSA to assure

that the five general criteria are met. The CLIS and WLIS sites, as discussed below, are also acceptable under each of the 11 specific criteria. The evaluation of the preferred disposal sites relevant to the 5 general and 11 specific criteria is discussed in substantially more detail in the DEIS.

Specific Criteria (40 CFR 228.6).

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)). The proposed CLIS site is a rectangular area approximately 2 nautical miles by 1 nautical mile, located 5.6 nautical miles south of South End Point near East Haven, Connecticut, in water depths from 59 to 74 feet (18 to 22.5 meters). The sediments at the site are predominantly uniform clayey silt with an area of mixed sand, clay and silt. The seafloor at CLIS slopes from northwest to southeast. The proposed WLIS site is a rectangular area, of approximately 1 square nautical mile. The site is located 2.7 nautical miles north of Lloyd Point, New York and 2.5 nautical miles (4.6 kilometers) south of Long Neck Point near Noroton, Connecticut, in water

depths of 79 to 118 feet (24 to 30 meters). The sediments at the site are heterogeneous, with clay silt in the northeast corner and a mixture of sand-silt-clay in the center and southeast corner. These sediments are typical of those found in fine-grained depositional environments of the western basin of Long Island Sound. The seafloor at WLIS is a gentle downward sloping plane from north to south and is bisected by an axial depression that runs from east to west, dipping to 118 feet (36 meters) in one quarter of the site in the southern half. EPA anticipates that disposal of dredged material placed at either of these sites would adhere to mound configuration. Each site will be managed based on its unique environmental conditions.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult Or Juvenile Phases (40 CFR 228.6(a)(2)). The Corps and EPA has initiated ESA and EFH consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS). Through coordination with the New

York Department of Environmental Conservation, the Connecticut Department of Environmental Protection, NMFS and USFWS, data has been obtained on current threatened or endangered species in Long Island Sound. The many organisms at the proposed sites include zooplankton (copepods, tintinnids) and phytoplankton. These organisms display a range of abundance by season. The populations at or near
the proposed sites are not unique to the sites and are present over most of the sound. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at these sites is comprised primarily of Annelida, Mollusca, and Crustacea. Abundance was greater at the WLIS site. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur.

The sites are located off shore in a semi-enclosed estuary that is occupied by more than

83 fish species. Species richness did not vary change significantly among sites. Some fish species found to dominate the areas include winter flounder, windowpane flounder and scup. The American lobster is a primary shellfish resource in the sound. At the CLIS site, longfin squid were also abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain nonmigratory species. Most of the finfish species are migratory. It is expected that impacts to lobster will be short-term and associated with disposal, burial and loss of habitat or food.

The coast supports a large number of resident and migratory marine and coastal birds. Dozens of marine and coastal birds migrate through Long Island Sound annually. In addition, LIS provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the sound are harbor porpoises, long-finned pilot whales, seals and sea turtles (Kemp's ridley, loggerhead, leatherback and hawksbill).

The federally listed threatened and endangered species or species of "special concern" which may occur within the area of the proposed sites include: Humpback, fin, and right whales; loggerhead, green, Kemp's ridley, and hawksbill sea turtles; Atlantic and Shortnose sturgeons. No endangered birds are expected to occur in the area of the proposed sites. Occurrence of these species varies by season. Use of the sites by whales and endangered birds would be incidental. The presence of sea turtles may occur in this area of the proposed sites during the summer and fall. It is not expected that dredging activities would have any significant adverse effect on these species or their critical habitat. Disposal at both of the proposed sites is expected to result in the mortality of benthic organisms as an immediate result of material burying organisms on the seafloor. However, recolonization at the disposal sites is expected to occur within a year or more after a disposal event. With respect to the other living resources that use the proposed CLIS and WLIS sites, the sites are not being located in areas that provide limited or unique breeding,

spawning, nursery, feeding, or passage areas.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)). The CLIS and WLIS disposal sites are within the semienclosed Long Island Sound estuary. The closest beaches, refuges sanctuaries or areas of special concern are at least two nautical miles from either disposal site. The CLIS and WLIS disposal sites are approximately 6 nautical miles (11 kilometers) from the closest beaches (Short Beach and Calf Pasture Beach, respectively). For the CLIS disposal site, the closest refuge or sanctuary (approximately seven nautical miles) is the Outer Island Unit of the Stewart B. McKinney National Wildlife Refuge. Areas of special concern at the CLIS site include Quinnipiac River Marsh Wildlife Management Area, Great Harbor, Wildlife Management Area and Wildwood State Park. For the WLIS disposal site, the closest refuge or sanctuary is the Stewart B. McKinney National Wildlife Refuge, Caumsett State Park and Target Rock National Wildlife Refuge. It is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are

either land-based or further than two nautical miles from either proposed disposal site. Therefor, EPA has determined that dredged material disposal at the preferred disposal site locations should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)). The typical composition of dredged material to be disposed at the sites is expected to range from predominantly "clay-silt" to "mostly sand." This expectation is based on data from historical projects from the Central and Western Regions of Long Island Sound. The disposal of this material shall occur at designated buoys and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. Suitability determinations will be made before authorization for disposal under MPRSA section 103 and CWA

section 404 will be issued. The sites that are proposed to be designated will receive dredged materials determined to be suitable for ocean disposal that are transported by either government or private contractor hopper dredges or ocean-going bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface.

Furthermore, it should be emphasized that these disposal sites are being promised for designation only to receive dredged material; disposal of other types of material at these sites will not be allowed. It should also be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (e.g., industrial waste, sewage sludge, chemical warfare agents). See, e.g., 33 U.S.C. 1414b; 40 CFR 227.5(b). For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed of at the sites.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)). Monitoring and surveillance are expected to be feasible at both

proposed sites. Both sites are readily accessible for bathymetric surveys and have undergone monitoring, including sidescan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will be made by EPA New England and the Corps' New England District who share the responsibilities of managing and monitoring the disposal sites. Once the proposed sites are designated, monitoring shall be completed in accordance with the then-current SMMPs. It is expected that revisions to the SMMPS may be made periodically; revisions will be circulated for review, coordinated with the affected states and become final when approved by EPA New England Region in conjunction with the Corps' New England District. See 33 U.S.C. 1413(c)(3).

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)). The interactions of bathymetry, wind-generated waves and river and ocean currents are complex. Tidal

currents are the dominant source of water movement in LIS. Tidal currents generally run east-west parallel to the axis of the Sound and are substantially stronger in the eastern portion of the sound. At the CLIS site, average peak ebb and peak flood currents run 20 to 30 centimeters/second (depth averaged), with the spring tides 20 to 40 percent stronger. The dominant flow direction is east-west. Also observed is a net west-southwestward flow of approximately 2.5 centimeters/second. The wind fetch at both sites is limited by the semienclosed nature of the LIS and wave height was recorded in the spring of 2001 at 5 feet. However, wave heights can be developed at the site by winds from storms. A northeast storm with a return period of 2 years will generate waves of 8 feet. Storms with a return period of 10 years will generate waves of 10 feet. At the WLIS site, average peak ebb and peak flood currents run 20 to 30 centimeters/second (depth-averaged), with the spring tides 20 to 30 percent stronger. Based on studies conducted historically, flows directed to the west-southwest run from 30 to 45 centimeters/second 5 percent of the time. The wind

fetch is limited at this site, however wave height was recorded in the spring of 2001 at 6.5 feet. A northeast storm with a return period of 2 years will generate waves of 9 feet. Storms with a return period of 10 years will generate waves of 11 feet.

It is expected that peak wave induced bottom orbital velocities are not sufficient to cause significant erosion of dredged material at either of the proposed sites. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics, and current velocities and directions at the CLIS and WLIS sites are appropriate for designation as a dredged material disposal sites.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)). The CLIS and WLIS disposal sites are currently being used for disposal activity pursuant to the Corps' short-term site selection authority under section 103(b) of the MPRSA. 33 U.S.C. 1413(b). These sites have also been used historically under prior legal regimes. These past

disposal operations at these sites have been managed and material disposal has been monitored. Past use of these sites generally makes them preferable to more pristine sites that have either not been used or have been used in the more distant past. See 40 CFR 228.5(e). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use these sites on a long-term basis.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)). In evaluating whether disposal activity at the sites could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sides

and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the disposal sites. Commercial fishing activities occur throughout LIS. Commercial fish trawling occurs in the vicinity of the CLIS proposed site and is the only area within the western and central Sound that fishermen can trawl successfully due to the abundance of lobster pots in other areas of the Sound. Commercial fishing is not affected at the WLIS site since it is not currently used due to harvesting restrictions. While lobstering occurs at both proposed sites, WLIS is a more active lobstering site than CLIS. Recreational fishing most frequently occurs from spring to fall in areas with reefs and other areas of high relief. Recreational fishing occurs at several reefs in LIS that are within two to five nautical miles of the proposed disposal sites. Fish and shellfish areas, occur in nearshore areas and, therefore, are not impacted by this action. A USCG lightering area overlays the northeast corner of the CLIS site. The Corps will coordinate with the USCG to shift the designated anchorage boundary to ensure that existing mounds

and future disposed dredged material is not disturbed. The proposed sites are not located in shipping lanes. Energy resources are located near the proposed sites, but no pipelines or cables are within their boundaries. While at the time of this evaluation only three pipelines were in place, development of several new pipelines is anticipated.

Furthermore, neither site is an area of specific scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly, depositing dredged material at the sites will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the proposed disposal sites should not impact shipping or activities discussed above.

9. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Survey (40 CFR 228.6(a)(9)). Water and sediment quality analyses conducted in the site areas and experience with past disposal in this region have not identified any adverse water quality or ecological

impacts from ocean disposal of dredged material. Baseline data is further described in the DEIS.

10. Potentiality for the Development of Recruitment of Nuisance Species in the Disposal Sites (40 CFR it 28.6(a)(10)). Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the sites.

11. Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)). Due to the location of the proposed sites in LIS, the cultural resource that has the greatest potential for impact would be shipwrecks. A review of the existing NOAA and Warren C. Reiss Marine shipwrecks databases illustrated a total of 39 shipwrecks in LIS. Although none of the known shipwrecks of historical significance are located within the boundaries of the proposed sites, the central LIS region is known to have at least twelve

shipwrecks and the western LIS region is known to have at least four shipwrecks. Undiscovered shipwrecks could occur in the area. As additional sidescan sonar surveys are conducted in the future, and if potential shipwrecks are identified, EPA
New England and the Corps' New England District will take appropriate action.

The Connecticut State Historic Preservation Officer has determined there are no known historic shipwrecks nor any known aboriginal artifacts at the CLIS and WLIS disposal sites. Two of the region's Indian tribes were included as cooperating agencies during the development of the EIS. The Indian tribes have not identified natural or cultural features of historical significance at either site proposed for designation in this rule.

E. Proposed Action

The DEIS concludes that the proposed sites may appropriately be designated for long-term use as open water dredged material disposal sites. The proposed sites are compatible with the general and specific factors used for site evaluation.

EPA is publishing this Proposed Rule to

propose the designation of the CLIS and WLIS disposal sites as EPA-approved open water disposal sites. The monitoring and management of requirements that will apply to these sites is described in the draft SMMPs. Management of these sites will be carried out by EPA New England in conjunction with the Corps' New England District.

It should be emphasized that, if an ocean disposal site is designated, such a site designation does not constitute or imply Corps or EPA's approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove of the actual disposal, if it determines that environmental requirements under the MPRSA or the CWA have not been met.

F. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a "significant regulatory action" under E.O. 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This final rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

3. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of

today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its

field. EPA has determined that this action will not have a significant impact on small entities because the proposed open water disposal site designation will only have the effect of providing long term environmentally-acceptable disposal options for dredged materials. This action also provides options which are safe for marine traffic (navigation hazards) on a continuing basis. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. The Unfunded Mandates Reform Act and Executive Order 12875.

Title II of the Unfunded Mandates

Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under

section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

5. Executive Order 13132: Federalism.

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of pour and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule addresses the designation of open water sites in Long Island Sound for the

potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any state, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. Although
Section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have

Tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This proposed rule designates open water dredged material disposal sites and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal officials. Thus, Executive Order 13175 does not apply to this rule.

7. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" (66 FR 8355 (May 22, 1001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act Section 12(d) f the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus

standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 128898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule will have a disproportionately high and adverse human health and environmental effect on any particular

segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

11. National Environmental Policy Act of 1969 Section 102(c) of the National Environmental Policy Act of 1969, section 4321 et seq., (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be "functionally equivalent" to NEPA, EPA has a voluntary policy to follow NEPA procedures when designating ocean dumping sites. See, 63 FR 58045 (October 29, 1998). In addition to the Notice of Intent published in the Federal Register in June 1999 (64 FR 29865 (1999)), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to

participate in DEIS scoping meetings. Three formal scoping meetings were conducted in June 1999. In addition, EPA and the Corps have held public workshops and several working group meetings. As discussed above, EPA is issuing a DEIS for public review and comment in conjunction with publication of this proposed rule.

In addition, EPA and the Corps will submit Coastal Zone Consistency determinations to the states of New York and Connecticut for publication in the Final EIS. Coordination efforts with NMFS and USFWS for ESA and EFH consultation
was initiated during the DEIS process.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Robert W. Varney,

Regional Administrator, EPA New England.

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

Part 228 - CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by removing and reserving paragraphs (b)(1), and (b)(2); and adding paragraphs (b)(3) and (b)(4) to read as follows:

228.15 Dumping sites designated on a final basis. * * * * * *

(b)* * *

(1) [Reserved]

(2) [Reserved]

(3) Central Long Island Sound Dredged Material Disposal Site (CLIS):

(i) Location: Corner Coordinates (NAD 1983) 41¦ 09'5"N, 72¦ 54'4"W; 41¦ 90'5"N, 72¦ 51'5"W.; 41¦ 08'4"N., 72¦ 51'5"W.; 41¦ 08'4"N., 72¦ 54'4"W.

(ii) Size: 2 square nautical miles. (iii) Depth: range from 18 to 23.5 meters.

(iv) Primary use: Dredged material disposal.

(v) period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to dredged material from Long Island Sound and vicinity.

(4) Western Long Island Sound Dredged Material Disposal Site (WLIS)

(i) Location: Corner Coordinates (NAD 1983) 41¦ 00'1"N., 73¦ 29'8"W.; 41¦ 00'1" N., 73¦ 28'0"W.; 41¦ 58'9N., 73¦ 29'8"W.; 41¦ 58'9"N., 73¦ 28'1"W.

(iii) Size: 1.2 by 1.3 nautical mile rectangular area.

(iii) Depth: range from 24 to 30 meters.

(iv) Primary use: Dredged material disposal.

(v) Period of use: Continuing use. (vi) Restriction: Disposal shall be limited to dredged material from Long Island Sound and vicinity.

* * * * *

[FR Doc. 03-22645 Filed 9-11-03; 8:45 am]

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MODERATOR ROSENBERG: A transcript of this hearing is being made to assure a detailed review of all the comments. A copy of this transcript will be available at the EPA's New England office in Boston, Massachusetts, and at the Corps' New England District Office in Concord, Massachusetts.

It will also be put on the website, or you may make arrangements with the stenographer for a copy at your own expense.

Individuals speaking this evening will be called to the microphone in the order they signed in, and as provided for in the hearing protocol that was distributed at the reception area.

When making a statement, please come forward to the microphone and state your name and the interest you represent. Now, as this is the third hearing, we are going to use those same time limits that we've used over the past. If you need to go a little bit further, please do so.

The traffic signal in front of me will indicate the following: The green light will come

on indicating that there are two minutes remaining; the amber light will indicate one minute left; and the red light will indicate that the time has expired. It is set presently for three minutes. Please identify if you are speaking for or representing a position of an organization. To speak for yourself, just say so.

Lastly, I want to re-emphasize that all who wish to speak will be given an opportunity to do so, and we will be here until 8:00 this evening. We will now receive your comments according to those protocols.

The first individual to provide comment for the record, Mr. Eugene Conklin. He will be followed by Mr. Tibor Brosz.

EUGENE CONKLIN: Thank you. My name is Eugene Conklin, and I'm the Commodore of the Wyncote Yacht Club in Huntington, New York.

We are pleased to submit comments on the EIS for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound.

The Wyncote Yacht Club in Huntington, New York, is currently in the process of doing a

dredging project here in our marina in Huntington, New York. We will be dredging 6,600 cubic yards of material. Our current approved disposal site is Western Long Island Sound. This project represents 18 barge loads of material.

We have gone through the process of investigating the costs of the optional disposal sites via overland trucking, and these costs are astronomical. It would take 220 truckloads and would cost the club, depending on the potential dump site in the Sound, at least four times as much as it would if the dumping disposal sites were in the Sound. If we had to use the trucking option, we could not afford it, and would have to start eliminating slips in our marina. We currently only have 75 boating members in our club.

There are a number of environmental issues involved in overland trucking. We would have to dry all the material on our bulkhead before it could be loaded onto trucks. This means double handling of the material. This also would create a significant odor while drying the dredged materials on the waterfront bulkhead that borders residential housing areas. In addition, it would mean that all

of the additional truck traffic must go through the village of Huntington. The closest major artery is almost eight miles away from the waterfront, such as the Long Island Expressway, which is the only way off the island.

We must dredge to maintain the safety and viability of our boating activities. We have cycles of dredging roughly about every 10 to 15 years to clear the silting at our docks and bulkhead. The silting comes into the harbor and flows into our marina from the natural silting and tidal flow and storm action coming from Long Island Sound.

We are not a Corps of Engineer harbor, and we have to bear the full cost of permitting and dredging our facility. These costs are significant.

After reading the EIS, we strongly support the recertification of both the Western Long Island Sound disposal sites and the Central Long Island disposal sites. Proper DEP and Corps management has proven effective in minimizing any environmental stresses on part of the Sound and our adjacent shores.

Thank you very much.

MODERATOR ROSENBERG: Thank you, sir. Next speaker, Mr. Tibor Brosz.

TIBOR BROSZ: I won't be going. MODERATOR ROSENBERG: Okay. Thank you, sir.

TIBOR BROSZ: Thank you.

MODERATOR ROSENBERG: Mr. John Craine. JOHN CRAINE: Thank you, and good afternoon. My name is John Craine. I am Cochairman of the Fairfield County Commodores Association, and speaking on behalf of the organization. We were founded in 1993 and represent 14 yacht clubs with over 5,000 members, including more than 1,500 junior sailors and 3,000 adult boaters.

We would like to take this opportunity to express our strongest support for the recertification of both the Western and Central Long Island Sound disposal sites. Proper DEP and Corps management has proven effective in minimizing any environmental stresses on this part of the Sound and our adjacent shores.

Many of our clubs rely on periodic

dredging at our facilities and in the channels leading to these facilities to maintain our sailing activities. Our boaters range in age from 8 to 80. We provide water venues for junior sailors and our high school sailing teams, in addition to thousands of adult sailors. We are a significant recreational resource for our towns.

Our clubs must dredge to maintain the safety and viability of our boating activities. We have cycles of dredging every seven to eight years to clear the silting at our piers and launching ramps. Our harbor channels also have to be dredged. Silting comes down the rivers feeding into our harbors, as well as the natural silting from tidal and storm action.

Most of our clubs are not located in Corps of Engineers federally-designated harbors, and we have to bear the full cost of permitting and dredging these facilities on our own. These costs are significant.

In the past, our dredged material has been disposed of at these sites. They represent the only practical, economical sites for this material. Alternatives would push the dredging

costs out of sight for our resources. For example, moving dredged material inland could result in a tenfold increase in dredging costs. For example, a typical $200,000 maintenance project would escalate to over $2 million.

In summary, the recertification of these sites is critical to maintain our extensive boating activities. Our clubs depend on access to these sites to keep our dredging costs down and to avoid the encumbrance and large expense of overland dredged material removal.

Thank you.

MODERATOR ROSENBERG: Thank you, sir. The next speaker, Mr. William Man. WILLIAM MAN: Good evening, everybody.

My name is William Man. I'm a principal in a company called Altamira Development, and I am here tonight to offer a safe, cost-effective solution that would provide a beneficial reuse of the dredging spoils.

Altamira is a piece of land that is 4,000 acres in size that needs to be raised 25 feet in order to make it a land that could be used for development. It has a capacity of up to and well

in excess of 250 million tons of dredging spoils and other materials. Permits are in place, approved; contracts are in place and signed; and we're ready to receive material as of now.

The site, to give you a little background of it, and why we want these materials. It's -- the main reason it is going to be beneficial -- it's beneficial reuse of the land. It's going to be -- or the beneficial reason

or -- I'm sorry. The main reason that we are taking these materials to elevate the land, as I stated before, the site, as it stands right now, has clay, which is very impermeable. It's four times ten to the negative eight. This means that it's very difficult for anything to seep through the clay, and we have an average of 62 feet of clay as a base on the entire site.

It's a cheaper alternative than upland disposal. There is no trucking involved whatsoever, no overland trucking. We place the material in containment -- in containment cells.

We cap them with one meter of clay. This is all done to American protocol.

Why should we be considered for this?

It's a 40-year project. It's a long time. We have a lot of land to fill. We have to go up, and it's going to very easily encompass any long-term goals put forth, set forth by the federal government, and we would be able to handle all materials that come out of here.

We're up and running, as I stated in the beginning. We have permits. Contracts are signed. There is no need that I can see, of course with further discussion, that any of the previously used sites or previously closed sites have to be reopened. That's it.

Thank you.

MODERATOR ROSENBERG: Thank you, sir. The next speaker, Mr. Russell Vollmer. RUSSELL VOLLMER: Good afternoon. My name is Russell C. Vollmer, and I am a past Commodore of the Greater Huntington Council of Yacht and Boating Clubs, Incorporated. We are a not-for-profit organization of 21 nonprofit membership-owned yacht, boating and water sport organizations located in the bay area of Huntington Township, Long Island, New York. We estimate the total combined membership of our organization is

over 3,500.

Our organization has been in the forefront of water quality preservation by having advocated and seen our local governments declare
our harbors discharge-free zones for boating wastes. Between that and a public education, along with better maintenance of local sewage treatment plants over the last 10 years, we have seen our harbors become cleaner than they had been for many prior years. In fact, sampling of bottom materials from one of our harbors a few years ago indicated that the material was clear of toxicants with the exception of the areas immediately adjacent to two municipal outflows. The continued cleanliness of our local waters is no doubt partly due to our advocating and witnessing our local governments' installation and improvement of stationary waste pumpout stations and their purchase and implementation of three pumpout boats that serve both local and visiting boats anchored in our waters. I think it is evident that our organization and its membership are quite concerned about the quality of our waters.

At the same time, we are also concerned

with the continued availability of our waterways for recreational use. Unfortunately, this brings up an ongoing threat to the future of our local harbors, the silting of our harbor bottoms from upland development runoff. In one local harbor, this is dramatically apparent from aerial photographs we have seen taken some 20 to 25 years apart that graphically illustrate how the silt has stretched into one -- into this harbor like elongated fingers of an ever-growing hand in that space of time. Given time, enough time, we and our future generations could lose a significant portion of this harbor and others like it to recreational boating as it gradually becomes unnavigable.

Every 10 to 20 years, the main channels in this and other harbors in our area must be dredged to maintain the depth required for safe navigation by vessels that frequent these waters. However, areas where vessels are moored or launched are not routinely dredged, and these areas are filling in. Many boats moored in these anchorages now touch bottom at low tide when only five to ten years ago they did not. This points to the need for some major dredging projects in the very near

future that would possibly require the removal and disposal of several hundred thousand cubic yards of bottom material. A typical channel dredge in one of our harbors yields about 75,000 cubic yards, so one can only guess what the dredging of anchorages would yield.

Presently, the only economical way to dispose of this material is to deposit it in the deep troughs of Long Island Sound, such as the disposal sites about which this meeting is being held.

Being concerned with water quality ourselves, we can understand the concern over the environmental impact of dredged material disposal, but we feel that so long as the material being deposited meets all of the water quality requirements for content, the only impact on the environment would be temporary until this material has settled and natural life recovers. Nature, as we know, can be remarkably adaptable, regenerating itself in even a few short years, as witnessed by the rebounding from the ashes of a forest fire. Given today's requirements for purity, we will only be disposing of material that is as close to

natural as possible.

If any of the sites presently available were closed, the impact on the costs would be tremendous. So, therefore, we are today advocating and supporting keeping the subject disposal sites open for as long as they are viable so that local dredging projects can be accomplished within the next few years, therefore buying us some time until other methods of disposal and improvements in local drainage facilities -- already underway in some areas -- to control runoff can be implemented.

Thank you.

Whew. I didn't think I was going to make it. I skipped some.

MODERATOR ROSENBERG: I need to apologize for -- I need to apologize for the three minutes, but again, this is the third hearing. We have a level playing field. That was wonderful. Thank you.

The next speaker, Art Glowka.

ART GLOWKA: Yeah. I couldn't follow that. Yeah, hi. My name is Art Glowka. I'm a recreational fisherman and an environmental activist. It's well known to the EPA here in the

Western Sound. Number one, I've got to congratulate you all. This is a very comprehensive, complete, well written document. I am astounded of just how well the whole process is.

Secondly, I am probably one of the few people here that has actually been over the Western Long Island Sound dumping site, and if you didn't know where it was and you had your fish depth recorder, bottom depth recorder, you would never even know it was there. It's just a very slight hump on the bottom of the Sound. There used to be a buoy there, but there isn't anymore.

Specifically, my question to you is, now that I have congratulated you and patted you on the back: Can you double check and tell me how much this whole process costs; yes or no?

MR. HABEL: We can let you know.

ART GLOWKA: Let me know by a letter, right?

MODERATOR ROSENBERG: As I said, sir, we are here to receive your comments.

ART GLOWKA: Okay.

MODERATOR ROSENBERG: Not to enter -- not to enter into any discussion of those

comments or to reach any conclusions.

ART GLOWKA: Number two.

MODERATOR ROSENBERG: The questions you have should be directed to --

ART GLOWKA: Hey, the light is running. It's my time.

MODERATOR ROSENBERG: Yes, sir.

ART GLOWKA: Number two. Where does the Ambro Amendment fit into this? Okay. Write me an answer sometime.

MODERATOR ROSENBERG: Thank you, sir. Thank you.

That's the end of the individuals that have signed up to speak.

Is there anybody here that did not sign up, or wishes to provide comment at the moment?

Ladies and gentlemen, we will be here until 8:00 p.m. We will recess now. If, at any time, you care to make comment, or for people that are coming in who may be held up because of the high winds, we will remain here to continue to receive comment.

And so I will recess now; and for those of you who have questions that may have gone

unanswered, now would be the time to ask them.

Thank you.

(Whereupon, at 5:23 p.m., there was a short break taken.)

MODERATOR ROSENBERG: Ladies and gentlemen, we are coming back in session.

Okay. We're now back in session.

The next speaker, Mr. Nicholas Everett.

NICHOLAS EVERETT: Good afternoon -- good evening. My name is Nicholas Everett. I'm the Commodore of the American Yacht Club from Rye, New York.

Rye, like many other communities on the northern shore of Long Island Sound, serves as a regional access point for the water. We have the oldest planned amusement park in the country, Playland. We have a regional park. We have five private clubs, a public boat basin, a scout center, and numerous other private docks. We all rely heavily on Milton Harbor being dredged occasionally. There is a federal channel, but it isn't used that much. There were some ships built during World War II in it, but right now it's pretty much all pleasurecraft. The American Yacht

Club has over 350 boats, 205 moorings. We run sailing programs for ages eight and up, and we currently have three members training for the Olympics. So it's a pretty serious activity at our club, and we take this very seriously.

We support the recertification of both the Western and Central dredging locations. It is our understanding that most of our dredging material is going to the Central, but in either case, they both are the most economical means to do it, and the only way that we would see fit and viable for us to continue.

Thank you.

MODERATOR ROSENBERG: Thank you, sir. We will now go back into recess until the next speaker arrives.

Thank you.

(Whereupon, at 5:38 p.m., a short break was taken.)

MODERATOR ROSENBERG: Ladies and gentlemen, we are back from recess.

Our next speaker is Mr. Basil Lyden. Sir.

BASIL LYDEN: Hi. My name is Basil

Lyden, B-A-S-I-L, L-Y-D-E-N. I am the Commodore of the Noroton Yacht Club, which is a sailing organization in Darien, Connecticut of approximately 270 families. Commodore is just an old fashioned sailing term for, in fact, the president of the club.

We are delighted with the EIS that the regional EPA did. We've got members who actually read it. We have members who actually go to every single meeting and follow it very, very closely. It's a confusing issue. It's an issue that is very dear to us for a number of reasons, from environmental reasons, because we do have a love of the water, to practical reasons.

Our yacht club is primarily a small boat club, and we have, oh, I would say 300ish boats in our harbor that every seven to eight years the silt comes down the Goodwise River primarily and forces us to dredge. If we're to continue with our sport, we've got to dig holes in the channel and take that dredge out to the dump sites, and dump it there.

And as all of you know, we have also written a letter, the costs of this from the

studies is quite prohibitive, but we collect it. We are not a Corps harbor. We are strictly a private harbor. So with the past few dredges, we have had agreements with the Town of Darien where they pick up half the cost. And the various folks that are impacted, whether it's our club, the Darien Boat Club, or private citizens, fund the rest.

If these sites were to be closed, and we had to do it over land -- as somebody who just drove down from Darien, as a side bar, I don't know what would happen to traffic. It's bad enough on 95. If we start filling it up with trucks, it's going to be worse. But that's a side bar. Certainly, the direct impact to us with our 270-family organization, we couldn't afford the dredging and would probably have to try to find to do our sport and our recreation in other places.

Finally, thank you. I just want to let you know, we work with the various government agencies for safety of boats coming through our harbor and using our piers. We host a couple of high school sporting teams, and we have a multigenerational background, so it would cause

harm for numerous people beyond just the members in the room.

Thank you.

MODERATOR ROSENBERG: Thank you, sir. Sir, I see you just arrived. Would you like to provide comment on the record?

HEARING PARTICIPANT: I'm listening for now.

MODERATOR ROSENBERG: Okay. Thank you. At this point, we will go back to recess.

Thank you.

(Whereupon, at 7:03 p.m., there was a break taken.)

MODERATOR ROSENBERG: Ladies and gentlemen, I would like to call this hearing back to order. Before I ask the Hearing Officer to come back with closing remarks, is there anybody in the audience that has not signed in, but wishes to provide comment at this time?

Ladies and gentlemen, Mr. Melville Cote.

MR. COTE: Well, we've heard some thoughtful statements today, but careful analysis

will be required before a determination can be made and a decision rendered. Written statements may be submitted to the Environmental Protection Agency, or the Corps of Engineers until 5:00 p.m., November 17, 2003. These comments will receive equal consideration with those presented today. We at the Environmental Protection Agency and the Corps of Engineers extend our appreciation to all who took the time to involve themselves in this public review process.

And finally, before I conclude this hearing, I would like to extend my appreciation to the Westin Hotel for the use of this fine facility; and the City of Stamford Police for their support; and I would like to thank you all for taking the time to provide us with your thoughts, your comments, and your concerns.

Good night.

(Whereupon, at 8:01 p.m., the hearing was adjourned.)

C E R T I F I C A T E

I, Marianne Kusa-Ryll, Registered Merit Reporter, do hereby certify that the foregoing transcript, Volume I, is a true and accurate transcription of my stenographic notes taken on November 13, 2003.

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Marianne Kusa-Ryll, RMR